MASTERING THE LAW

The complimentary newsletter of the Law Offices of Kathleen J. Masterton, P.C. *November2007*
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A Message From Kate

As many of you know, last August I was involved in a serious horse accident which left me with stitches, cracked ribs, a separated shoulder, and a torn rotator cuff (but like any good horsewoman, when I came to, the first thing I said was, "Is the horse all right?"). Though many people said, "Poor you," I consider myself very lucky—I neither died nor was crippled, as occurs in so many horse accidents. And like any good estate planner, I was glad that I had an Advance Medical Directive and a Durable Power of Attorney; had I been more seriously injured, at least my husband would have been able to know and implement my medical wishes, and manage my financial affairs until I regained my ability to do so. Clients often approach me first about a will, but I believe the first priority is to plan for managing a health crisis during life, when it really matters to you; after all, what happens to your money after you die will not matter to you then. While everyone with assets certainly needs comprehensive estate planning, the Advance Medical Directive and the Durable Power of Attorney are critical and always come first for my clients; I believe the need for them is even more critical among horse people and others engaged in activities where injuries are highly likely to occur. So, if you do nothing else in the way of estate planning, please make sure that you sign both of these documents and that those you name as your agents under each have a copy. After all, you never know when you will need them. --Kate Masterton

The best compliment our clients can give is to refer friends and family members to us for legal services. Thank you for giving us the continuing opportunity to serve you and your loved ones. Our success is possible due to the support of satisfied clients!

'Tis Better To Give…

Gifting is an important part of many estate plans. Under current IRS regulations, any person may make gifts worth up to $12,000 to an infinite number of persons, in any (every) calendar year, with no federal tax consequence: no gift tax is payable by the giver or the recipient, and no gift tax need be filed. Hence, if a person has an estate subject to estate tax, he or she can diminish its value—sometimes substantially-- by making a $12,000 gift to each child, each child-in law, each grandchild, and so on. One could make such gifts in December 2007 and then again in January 2008. While such a gifting program should be carefully considered as part of an overall estate and financial plan, and is not for everyone, in the right circumstances (especially a seriously ill giftor) it can help pass wealth to the next generation without generating taxes. Gifts need not be of cash; they may take many forms; for example, a percentage interest in a family business. To see if gifting is a correct strategy in your individual case, call the Law Offices of Kathleen J. Masterton, P.C.

At this writing, the U.S. Senate is scheduled to consider the Farm Bill in early November. Efforts will be made to offer the Agricultural Job Opportunities, Benefits and Security Act of 2007, better known as AgJOBS, as an amendment to that bill during consideration. AgJOBS (S.340) is a comprehensive solution to many of the industry's immigration problems with respect to H-2A workers at our horse breeding farms and ranches. Contact your senators to support this effort and ensure the viability of Maryland's horse industry!

DEATH AND TAXES—NOT ALWAYS LINKED!

While it's true that nothing is certain except death and taxes, there are many states that do not assess any form of death tax. The Federal government charges a hefty tax on the value of a decedent's state, while the state of Maryland assesses BOTH a tax on the decedent's estate AND a tax on inheritance by certain individuals not closely related to the decedent—and based on all the tax talk in Annapolis these days, Maryland taxes are only likely to get worse, not better. Clients approaching retirement often ask if death tax considerations should influence where they choose to retire. While that is a wholly personal decision, I inform them that Virginia and Delaware are among the 26 states that currently have no death tax of any kind. Pennsylvania assesses only an inheritance tax—no estate tax. Our elected officials should take note that savvy people who watch their money do consider taxes when making important life choices.

BUSINESS LAW TAX NEWS

Newly-formed small businesses can enjoy certain tax advantages if they elect "S" status under the federal tax laws, but this must be done within a short time after the corporation is formed. Now new IRS guidance provides an additional simplified method for taxpayers to request relief for late S corporation elections. Small businesses that missed filing Form 2553, Election by a Small Business Corporation, before filing their first Form 1120S, U.S. Income Tax Return for an S Corporation, now may in certain circumstances file both forms simultaneously. An additional simplified method now exists for taxpayers to request relief for a late S corporation election and a late corporate classification election intended to be effective on the same date. Also, the IRS recently issued final regulations treating single-owner eligible entities that are so-called "disregarded entities" (the company or enterprise is not regarded as a separate entity from its owner) and qualified subchapter S subsidiaries as separate entities for purposes of employment tax and related reporting requirements. The new regulations also treat these disregarded entities as separate entities for certain excise taxes reported on Forms 720, 730, 2290, and 11-C, as well as for excise tax refunds or payments claimed on Form 8849, and excise tax registration on Form 637. For employment taxes, the regulations will apply to wages paid on or after Jan. 1, 2009. For excise taxes, they will apply to liabilities imposed and actions first required or permitted in periods beginning on or after Jan. 1, 2008.

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IF YOU WANT TAX TREATMENT AS A BUSINESS, ACT LIKE ONE!

When running your horse or any other business that may be subject to challenge as being merely a hobby, knowing and applying the auditing points covered in Internal Revenue Code Section 183 are critical. Your CPA and tax attorney may not have worked with the section but it's the section which can save you thousands in taxes. Pay particular attention to operating in a completely "businesslike" manner, which, among other things, means keeping excellent documentation, especially of the time and expenses you dedicate to making the business a going concern. In Davis v. Commissioner of Internal Revenue, United States Tax Court, 2000 WL 30726, March 27, 2000, the court rejected the IRS's contention that the taxpayer was operating a "hobby" stable. In ruling in favor of the taxpayer, thereby allowing them to deduct thousands in business expenses, the tax court found that "Petitioners also spent large amounts of time operating the business, including personally constructing many of the facilities used by the (horse) business."

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The cold snowy days to come are the perfect opportunity to pull out those old wills and trusts and review them. You may be surprised at what they say compared to what you thought they said, and what you would want them to say now in light of marriages, births, deaths, retirements, job changes, tax changes, and other major life changes. Put those winter days indoors to good use and update your estate planning.